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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,849	10/02/1998	KIRKOR SIRINYAN	MO-4857/LEA	9230

157 7590 12/16/2002

BAYER CORPORATION  
PATENT DEPARTMENT  
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PITTSBURGH, PA 15205

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/16/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

09

Application No.

155849

Applicant(s)

SIRINYAN et al

Examiner

NEC Long

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 9/16/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Receipt of Brief is acknowledged. Prosecution is re-opened. The Final rejection of 4/18/02 is withdrawn.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner finds no description in the specification of any solid pesticide coated onto an inorganic carrier. Claim 1 paraphrases p. 2, a, b, c, d description of the inventive aqueous suspension but adds, "In the form of a solid – applied as a coating." There is no disclosure of application of a solid active to support this language. The original claim did not suggest the presence of solid on solid, nor do the examples teach that format. Rather, the application of a solution of an active agent, cyfluthrin, is followed with added free particulate cyfluthrin in the aqueous suspension.

Critically, the examples both show B-cyfluthrin dissolved in acetone then mixed with  $Al_2O_3$ . This is not a coating of the cyfluthrin in solid form. The inventive concept is seen as the coated  $Al_2O_3$ ; comparison is made with solid cyfluthrin of large particle size. The inventive cyfluthrin is mixed, thus adsorbed onto, the carrier; the particle size of the carrier alone is that of the prior art cyfluthrin. The application discloses that the carriers are coated by customary coating means, then mixed with solid additional active (p. 4, 2<sup>nd</sup> paragraph) or the mix of active coated carrier with free active (3<sup>rd</sup> paragraph) may be prepared from the active compound solution, but only normal coating means are disclosed, with actives in solution.

There is not even a disclosure of how much carrier is used – only that carrier + active (example 1) is 11.8 g. We do know free cyfluthrin is 11 microns, and the carrier is 4.8-22.5 microns. The 2 examples are shown to provide at least the residual effects and at a lower dose, perhaps, than the comparative example of cyfluthrin in free solid form. However, the inventive concept is not predicated on the solid active; it is preferred to use cyfluthrin, but other actives are not required to be solids – permethrin, cypermethrin pyrethroids are also preferred (p.3, lines 5, 6) – alternatively; the pyrethroids can be construed as solids.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ackerman-EP 0029626.

\_\_\_\_\_ This rejection is maintained, because applicant, to the carrier, did not apply the preferred cyfluthrin in a solid form while equivalent pyrethroids are seen to be applied in the same manner – by customary coating processes (p.4, paragraph 2, of the instant specification). Ackerman, in fact, does everything applicant does, but example used cypermethrin

○ The/wise, the use of an inorganic carrier with active at 0.1-25%, with auxiliaries of .6-23%, and carrier @ 1:1 to 100:1 of active, (p. 1, 2 (a-d)), With water balance, is inclusive of the instant claim. As to the instant active, Ackerman shows it as j, p.3. The carrier is at 0.5 – 25 micrometers (p. 3).

Also, it is stated that the pyrethroid is distributed over or adsorbed upon the carrier (p. 1, (a)). That is more than applicant discloses except at the claim 1. P. 5, 6

describe the process in greater detail than applicant's statement of preparation in a known manner.

However examiner fails to see the process of the instant examples. Solution of cyfluthrin in acetone, followed by application to alumina. We note also, that the formulations <sup>auxiliaries</sup> no longer are claimed. We would consider them to be antifreeze, Bactericide, defamer; Ackerman's example 1 thus is within the 2% of instant parameters; 8.5% pyrethroid active, about 8% auxiliaries, and 6% antifreeze equivalent of glycerol.

Applicant's arguments filed on 9/16/02 have been fully considered but they are not persuasive. Applicants Brief is not persuasive, because upon review of the instant specification, it was discovered that the claim is beyond the scope of the specification. Thus, although Ackerman neglects to solubilize actives in acetone, Ackerman does state the carrier, (again, not applicants as exemplified, but only as claimed) is coated with the active. Although cypermethrin is not cyfluthrin, it is one of applicant's preferred pyrethroids, and in fact, Ackerman includes cyfluthrin in the pyrethroids, along with Permethrin (a) and deltamethrin (c). Applicant's arguments are mainly to distinguishing Ackerman's use of Liquid pyrethroids to applicant's solid. However, Ackerman's label is liquid or semi solid and included is the same pyrethroid. Applicant prefers, cyfluthrin, which applicant identifies as solid. We could not modify Ackerman – since it would be unsuitable, it would be unsuitable for applicant also – clearly it's not – there has to be a difference in the amount or ratio of carrier, the specific carrier, and the way in which it is applied. Applicant claims none of this; rather the claim is generated out of what is

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presumed to be an attempt to overcome the Ackerman reference – perhaps the material seen as new matter was discovered after the application was filed; but if so, there is not a sufficient description as to how to attain it. The examples don't.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
November 26, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" being more prominent than the last name "Levy".

**NEIL S. LEVY**  
**PRIMARY EXAMINER**